

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**SKYMARK FINANCE CORPORATION**

Applicant

- and -

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD  
CORPORATION**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**FURTHER SUPPLEMENTARY APPLICATION RECORD**

July 13, 2021

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO # 21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Sanee Tanvir** (LSO # 77838T)

Tel: (416) 218-1128

Fax: (416) 218-1853

E-mail: [stanvir@chaitons.com](mailto:stanvir@chaitons.com)

**Lawyers for the Applicant**

TO: SERVICE LIST

## SERVICE LIST

### **CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

#### **Harvey Chaiton (LSO # 21592F)**

Tel: (416) 218-1129

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#### **Sanea Tanvir (LSO # 77838T)**

Tel: (416) 218-1128

Fax: (416) 218-1853

E-mail: [stanvir@chaitons.com](mailto:stanvir@chaitons.com)

### **Lawyers for Skymark Finance Corporation**

### **KIRWIN PARTNERS LLP**

423 Pelissier Street  
Windsor, ON N9A 4L2

#### **Rodney M. Godard**

Tel: (519) 255-9840 ext. 112

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### **Counsel for Mahal Venture Capital Inc. and Golden Miles Food Corporation**

### **KSV RESTRUCTURING INC.**

150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

#### **Noah Goldstein**

Tel: (416) 932-6207

Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

### **Proposed Receiver**

**WATEROUS HOLDEN AMEY HITCHON LLP**

20 Wellington Street  
P.O. Box 1510  
Brantford, ON N3T 5V6

**Dennis Touesnard**

Tel: (519) 759-6220  
Email: [dtouesnard@waterousholden.com](mailto:dtouesnard@waterousholden.com)

**Counsel for Vicano Construction Limited**

**DEPARTMENT OF JUSTICE CANADA**

Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

**Diane Winters**

Tel: (416) 973-3172  
Fax: (416) 973-0810  
Email: [Diane.Winters@justice.gc.ca](mailto:Diane.Winters@justice.gc.ca)

**Lawyers for Canada Revenue Agency**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF FINANCE**

Legal Services, 11th Floor, 777 Bay Street  
Toronto, ON M5G 2C8

Tel: (416) 327-8463  
Fax: (416) 325-1460  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

**SANTOKH MAHAL**

800 Swinbourne Drive  
Mississauga, ON L5V 1J6  
[s.mahal@rogers.com](mailto:s.mahal@rogers.com)

**JESSE MAHAL**

6845 Second Line West  
Mississauga, ON L5W 1M8  
[jesse.mahal@gmail.com](mailto:jesse.mahal@gmail.com)

## INDEX

### TAB DOCUMENT

- 1. Affidavit of Paul Millar sworn July 13, 2021
- A. Mortgage for \$4mm loan and Transfer of Mortgage
- B. Mortgage for \$9.6mm loan
- C. Mortgage for \$6.4mm loan
- D. Final executed copy of the Forbearance Agreement

# **TAB 1**

Court File No. CV-21-00664778-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**SKYMARK FINANCE CORPORATION**

Applicant

- and -

**MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD  
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Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**FURTHER SUPPLEMENTARY AFFIDAVIT OF PAUL MILLAR**  
(sworn July 13, 2021)

I, Paul Millar, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY

AS FOLLOWS:

1. This affidavit is sworn as a supplement to the affidavits I swore on June 24, 2021 (“**First Affidavit**”), June 29, 2021 (“**Second Affidavit**”) and July 9, 2021 (“**Third Affidavit**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in my First Affidavit.
2. Attached hereto and collectively marked as **Exhibit “A”** is a copy of the registered mortgage for the \$4mm loan and schedule thereto and the Transfer of Charge from Merk to

Skymark. Attached hereto and marked as **Exhibit “B”** and **Exhibit “C”** respectively are copies of each of the registered mortgages for the \$9.6mm loan and \$6.4mm loan and the schedules thereto.

3. A draft version of the Forbearance Agreement was incorrectly attached as an exhibit in my First Affidavit. The final executed copy of the Forbearance Agreement includes handwritten and initialled changes made in paragraphs 2.2.2, 5.1, 6.4 and 6.5. Attached hereto and marked as **Exhibit “D”** is the final executed copy of the Forbearance Agreement.

**SWORN BEFORE ME VIA VIDEOCONFERENCE**, the affiant being located in the Town of Dillon, in the State of Colorado, United States, and the Commissioner being located in the City of Mississauga, in the Province of Ontario, Canada on July 13, 2021, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A large, handwritten signature in black ink that reads "Paul Millar". The signature is written in a cursive style and is enclosed within a large, hand-drawn curly bracket on the left side.A handwritten signature in blue ink, which appears to be "Sue Tan".

\_\_\_\_\_  
*A Commissioner, etc.*

\_\_\_\_\_  
**Paul Millar**

**THIS IS EXHIBIT "A" TO  
THE AFFIDAVIT OF PAUL MILLAR  
SWORN BEFORE ME THIS 13TH  
DAY OF JULY 2021**



---

*A Commissioner etc.*



**Properties**

*PIN* 32281 – 0176 LT *Interest/Estate* Fee Simple  
*Description* PT LT 39, 38 CON 3 BRANTFORD CITY, BEING PT 1 & 2 ON 2R6545, S/T EASEMENT  
AS IN BC67648 ; BRANTFORD CITY  
*Address* 155 ADAMS BOULEVARD  
BRANTFORD

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MAHAL VENTURE CAPITAL INC.  
*Address for Service* 6845 Second Line West  
Mississauga, ON  
L5W 1M8

I, Jesse Mahal, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* MERK INVESTMENTS LTD.  
*Address for Service* 46 Village Centre Place  
Mississauga, ON  
L4Z 1V9

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$4,000,000.00 *Currency* CDN  
*Calculation Period* monthly, not in advance  
*Balance Due Date* 2016/06/22  
*Interest Rate* 10.0% annually  
*Payments* \$33,333.33  
*Interest Adjustment Date* 2015 06 22  
*Payment Date* 22nd day of each and every month  
*First Payment Date* 2015 07 22  
*Last Payment Date* 2016 06 22  
*Standard Charge Terms* 200033  
*Insurance Amount* full insurable value  
*Guarantor* Santosh Mahal

**Signed By**

Monika Dylag 46 Village Centre Place acting for Chargor Signed 2015 06 22  
Mississauga (s)  
L4Z 1V9

Tel 9052721900

Fax 9052721905

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

MERK INVESTMENTS LTD. 46 Village Centre Place 2015 06 22  
Mississauga  
L4Z 1V9

Tel 9052721900

The applicant(s) hereby applies to the Land Registrar.

**Submitted By**

Fax 9052721905

**Fees/Taxes/Payment**

|                            |         |
|----------------------------|---------|
| Statutory Registration Fee | \$60.00 |
| Total Paid                 | \$60.00 |

**File Number**

Chargee Client File Number : 35498

#### SCHEDULE

IT IS AGREED between the parties and it shall require no further direction by the mortgagee herein that regular monthly payments under this mortgage shall be by way of a series of 12 cheques on closing, or pre-authorized debit, each in the amount of \$33,333.33.

In the event that any of the Mortgagor's postdated cheques or preauthorized cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn, the Mortgagor shall pay to each Mortgagee for each such returned cheque, the sum of TWO HUNDRED (\$200.00) DOLLARS as liquidated amount to cover Mortgagee's administration costs and not as penalty and such sum shall be a charge upon the said lands and shall bear interest at the rate hereinbefore stated. This mortgage is subject to late payment, renewal and discharge fees.

Any payment (other than payment of the regular payments of interest) that is made after 1:00 p.m. on any date, shall be deemed for the purpose of calculation of interest, to have been made and received on the next bank business day.

PROVIDED that the Mortgagor shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times upon payment of 2 months' interest by way of bonus.

It is agreed that all costs and expenses of the Mortgagee incurred in endeavouring to collect any money overdue under this mortgage, including all legal costs on a solicitor and client basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Mortgagor.

The parties herein agree that payment to discharge the said mortgage must be by certified cheque.

In the event of the Mortgagors selling, transferring or conveying the property herein mortgaged, than at the option of the mortgagee, the principal sum hereby secured together with all accrued interest thereon shall forthwith become due upon payment of 2 months' bonus.

In the event the mortgagor defaults in the observance or performance of any of the covenants, terms, provisions or conditions in any mortgage to which this mortgage is subject, the principal sum secured, shall, at the option of the mortgagee, forthwith become due and payable and all powers of the mortgagee under this mortgage in the event of default may be exercised.

#### MORTGAGE STATEMENTS

Provided that in the event the Chargees are required to provide a mortgage statement, there shall be an administration fee of \$100.00 for each such statement.

#### INSURANCE

In the event that the Chargees deem it necessary to arrange for insurance to be placed on the subject property, any amount paid by the Chargees therefore shall be forthwith payable by the Chargor to the Chargees with interest and shall be part of the indebtedness secured by the Charge bearing interest at the rate set out in the Charge. The Chargor shall also pay to the Chargees an administration fee in the amount of \$500.00 on each occasion on which the Chargees so arrange the placement of insurance.

#### INSPECTION

The Chargees or their agent may, in the event of default by the Chargor of any obligation under the Charge or as a requirement of maintaining insurance policy on the property, enter upon and inspect the subject property. There shall be an administration/inspection fee of \$200.00 for each attendance at the property.

#### PENALTY UPON DEFAULT

The Chargor agrees that should this Charge not be discharged on the "Balance Due Date" or if the Chargor fails to renew/extend this Charge on or before the "Balance Due Date" together with applicable renewal/extension fees or if the Chargees commence an action due to any default under the Charge, that the Chargees, in addition to all other remedies available, at their option shall be entitled to charge an additional amount equal to the payment of three month interest on the principal then outstanding.

#### ADMINISTRATION FEE UPON DEFAULT

In addition to any other fees or administration charges payable under this Charge, if the Chargees takes any proceeding by reason of the Chargor's default hereunder, the Chargees shall be entitled administration fee of \$1,200.00 for each such action or proceeding.

The applicant(s) hereby applies to the Land Registrar.

**Properties**

*PIN* 32281 - 0309 LT  
*Description* FIRSTLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, PLAN 2R6545; SUBJECT TO EASEMENT OVER PART 2, PLAN 2R6545 AS IN BC304245; SECONDLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, 3, PLAN 2R1332 AND PART 1, PLAN 2R4747; CITY OF BRANTFORD  
*Address* 155 ADAMS BOULEVARD  
 BRANTFORD

**Source Instruments**

| <i>Registration No.</i> | <i>Date</i> | <i>Type of Instrument</i> |
|-------------------------|-------------|---------------------------|
| BC276347                | 2015 06 22  | Charge/Mortgage           |

**Transferor(s)**

This transfer of charge affects all lands that the charge is against which are outstanding.

*Name* MERK INVESTMENTS LTD.  
*Address for Service* 46 Village Centre Place, Suite 300  
 Mississauga, ON  
 L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

| <b>Transferee(s)</b> | <b>Capacity</b> | <b>Share</b> |
|----------------------|-----------------|--------------|
|----------------------|-----------------|--------------|

|   |  |  |
|---|--|--|
| <i>Name</i> SKYMARK FINANCE CORPORATION   |  |  |
| <i>Address for Service</i> c/o 46 Village Centre Place, Suite 300<br>Mississauga, ON<br>L4Z 1V9 |  |  |

**Statements**

The chargee transfers the selected charge for \$4,000,000.00

**Signed By**

|              |   |                             |        |            |
|--------------|---|-----------------------------|--------|------------|
| Monika Dylag | 46 Village Centre Place<br>Mississauga<br>L4Z 1V9 | acting for<br>Transferor(s) | Signed | 2017 02 28 |
|--------------|---|-----------------------------|--------|------------|

Tel 905-272-1900  
 Fax 905-272-1905

I have the authority to sign and register the document on behalf of all parties to the document.

|              |   |                             |        |            |
|--------------|---|-----------------------------|--------|------------|
| Monika Dylag | 46 Village Centre Place<br>Mississauga<br>L4Z 1V9 | acting for<br>Transferee(s) | Signed | 2017 02 28 |
|--------------|---|-----------------------------|--------|------------|

Tel 905-272-1900  
 Fax 905-272-1905

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

|                       |   |  |            |
|-----------------------|---|--|------------|
| MERK INVESTMENTS LTD. | 46 Village Centre Place<br>Mississauga<br>L4Z 1V9 |  | 2017 02 28 |
|-----------------------|---|--|------------|

Tel 905-272-1900  
 Fax 905-272-1905

**Fees/Taxes/Payment**

|                                   |         |
|-----------------------------------|---------|
| <i>Statutory Registration Fee</i> | \$63.35 |
| <i>Total Paid</i>                 | \$63.35 |

**THIS IS EXHIBIT "B" TO  
THE AFFIDAVIT OF PAUL MILLAR  
SWORN BEFORE ME THIS 13TH  
DAY OF JULY 2021**



---

*A Commissioner etc.*

The applicant(s) hereby applies to the Land Registrar.

**Properties**

*PIN* 32281 - 0309 LT *Interest/Estate* Fee Simple  
*Description* FIRSTLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, PLAN 2R6545; SUBJECT TO EASEMENT OVER PART 2, PLAN 2R6545 AS IN BC304245; SECONDLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, 3, PLAN 2R1332 AND PART 1, PLAN 2R4747; CITY OF BRANTFORD  
*Address* 155 ADAMS BOULEVARD  
 BRANTFORD

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MAHAL VENTURE CAPITAL INC.  
*Address for Service* 6845 Second Line West  
 Mississauga, ON  
 L5W 1M8

I, Jesse Mahal, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)** *Capacity* *Share*

*Name* SKYMARK FINANCE CORPORATION  
*Address for Service* 46 Village Centre Place, Suite 300  
 Mississauga, ON  
 L4Z 1V9

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$9,600,000.00 *Currency* CDN  
*Calculation Period* monthly, not in advance  
*Balance Due Date* 2018/09/01  
*Interest Rate* Bank of Montreal Prime Rate plus 11.30% per annum  
*Payments* \$112,000.00  
*Interest Adjustment Date* 2017 09 01  
*Payment Date* 1st day of each and every month  
*First Payment Date* 2017 10 01  
*Last Payment Date* 2018 09 01  
*Standard Charge Terms* 200033  
*Insurance Amount* full insurable value  
*Guarantor*

**Signed By**

Monika Dylag 46 Village Centre Place acting for Signed 2017 08 09  
 Mississauga Chargor(s)  
 L4Z 1V9

Tel 905-272-1900  
 Fax 905-272-1905

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

MERK INVESTMENTS LTD. 46 Village Centre Place 2017 08 09  
 Mississauga  
 L4Z 1V9

The applicant(s) hereby applies to the Land Registrar.

**Submitted By**

Tel 905-272-1900

Fax 905-272-1905

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.35

Total Paid \$63.35

**File Number**

Chargee Client File Number : 39045

## SCHEDULE

IT IS AGREED between the parties and it shall require no further direction by the mortgagee herein that regular monthly payments under this mortgage shall be by way of a series of 12 cheques on closing, or pre-authorized debit, each in the amount of \$112,000.00.

In the event that any of the Mortgagor's post-dated cheques or pre-authorized cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn, the Mortgagor shall pay to each Mortgagee for each such returned cheques, the sum of TWO HUNDRED (\$200.00) DOLLARS as liquidated amount to cover Mortgagee's administration costs and not as penalty and such sum shall be a charge upon the said lands and shall bear interest at the rate hereinbefore stated. This mortgage is subject to late payment fee of TWO HUNDRED (\$200.00) DOLLARS per payment and renewal and discharge fees as applicable.

Any payment (other than payment of the regular payments of interest) that is made after 1:00 p.m. on any date, shall be deemed for the purpose of calculation of interest, to have been made and received on the next bank business day.

PROVIDED that the Mortgagor shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times upon payment of 2 months' interest by way of bonus upon 60 day written notice to lender.

PROVIDED that this mortgage shall be fully due and payable on the maturity date unless the Mortgagor and the Mortgagee have agreed in writing in advance that the mortgage should be renewed, if the mortgage is not renewed in advance, and is not paid in full on the maturity date, then the Mortgagor shall be liable to pay a penalty of two (2) months interest and such penalty shall be paid whether or not the Mortgagee takes mortgage action or requests payment.

It is agreed that all costs and expenses of the Mortgagee incurred in endeavouring to collect any money overdue under this mortgage, including all legal costs on a solicitor and client basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Mortgagor.

The parties herein agree that payment to discharge the said mortgage must be by certified cheque.

In the event of the Mortgagors selling, transferring, conveying or refinancing the property herein mortgaged, then at the option of the mortgagee, the principal sum hereby secured together with all accrued interest thereon shall forthwith become due upon payment of 2 months' bonus 60 day written notice to lender.

In the event the mortgagor defaults in the observance or performance of any of the covenants, terms, provisions or conditions in any mortgage to which this mortgage is subject, the principal sum secured, shall, at the option of the mortgagee, forthwith become due and payable and all powers of the mortgagee under this mortgage in the event of default may be exercised.

### MORTGAGE STATEMENTS

Provided that in the event the Chargees are required to provide a mortgage statement, there shall be an administration fee of \$100.00 for each such statement.

### INSURANCE

In the event that the Chargees deem it necessary to arrange for insurance to be placed on the subject property, any amount paid by the Chargees therefore shall be forthwith payable by the Chargor to the Chargees with interest and shall be part of the indebtedness secured by the Charge bearing interest at the rate set out in the Charge. The Chargor shall also pay to the Chargees an administration fee in the amount of \$500.00 on each occasion on which the Chargees so arrange the placement of insurance.

### INSPECTION

The Chargees or their agent may, in the event of default by the Chargor of any obligation under the Charge or as a requirement of maintaining insurance policy on the property, enter upon and inspect the subject property. There shall be an administration/inspection fee of \$200.00 for each attendance at the property.

### PENALTY UPON DEFAULT

The Chargor agrees that should this Charge not be discharged on the "Balance Due Date" or if the Chargor fails to renew/extend this Charge on or before the "Balance Due Date" together with applicable renewal/extension fees or if the Chargees commence an action due to any default under the Charge, that the Chargees, in addition to all other remedies available, at their option shall be entitled to charge an additional amount equal to the payment of three month interest on the principal then outstanding.



**ADMINISTRATION FEE UPON DEFAULT**

In addition to any other fees or administration charges payable under this Charge, if the Chargees takes any proceeding by reason of the Chargor's default hereunder, the Chargees shall be entitled administration fee of \$1,200.00 for each such action or proceeding.

**THIS IS EXHIBIT "C" TO  
THE AFFIDAVIT OF PAUL MILLAR  
SWORN BEFORE ME THIS 13TH  
DAY OF JULY 2021**

*San Sen*

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*A Commissioner etc.*

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 4

**Properties**

*PIN* 32281 - 0309 LT *Interest/Estate* Fee Simple  
*Description* FIRSTLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, PLAN 2R6545; SUBJECT TO EASEMENT OVER PART 2, PLAN 2R6545 AS IN BC304245; SECONDLY: PART LOTS 38, 39, CONCESSION 3 BRANTFORD CITY DESIGNATED AS PARTS 1, 2, 3, PLAN 2R1332 AND PART 1, PLAN 2R4747; CITY OF BRANTFORD  
*Address* 155 ADAMS BLVD  
 BRANTFORD

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MAHAL VENTURE CAPITAL INC.  
*Address for Service* 6845 Second Line West  
 Mississauga,  
 ON  
 L5W 1M8

I, Jesse Mahal, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

|                            |  |                          |
|----------------------------|--|--------------------------|
| <i>Name</i>                | SKYMARK FINANCE CORPORATION  | as to 82.27%<br>interest |
| <i>Address for Service</i> | 46 Village Centre Place, Suite 300<br>Mississauga, ON<br>L4Z 1V9     |                          |
| <i>Name</i>                | KLN HOLDINGS INC.  | as to 17.73%<br>interest |
| <i>Address for Service</i> | c/o 46 Village Centre Place, Suite 300<br>Mississauga, ON<br>L4Z 1V9 |                          |

**Statements**

Schedule: See Schedules

**Provisions**

|                                 |   |                 |     |
|---------------------------------|---|-----------------|-----|
| <i>Principal</i>                | \$6,400,000.00                                    | <i>Currency</i> | CDN |
| <i>Calculation Period</i>       | monthly, not in advance                           |                 |     |
| <i>Balance Due Date</i>         | 2019/10/01  |                 |     |
| <i>Interest Rate</i>            | Bank of Montreal Prime Rate plus 11.30% per annum |                 |     |
| <i>Payments</i>                 | \$74,666.67                                       |                 |     |
| <i>Interest Adjustment Date</i> | 2018 10 01  |                 |     |
| <i>Payment Date</i>             | 1st day of each and every month                   |                 |     |
| <i>First Payment Date</i>       | 2018 11 01  |                 |     |
| <i>Last Payment Date</i>        | 2019 10 01  |                 |     |
| <i>Standard Charge Terms</i>    | 200033  |                 |     |
| <i>Insurance Amount</i>         | Full insurable value                              |                 |     |
| <i>Guarantor</i>                |   |                 |     |

**Signed By**

Linda Cristina Zanardo 4310 Sherwoodtowne Blvd, #304 acting for Signed 2018 09 06  
 Mississauga Chargor(s)  
 L4Z 4C4

Tel 905-896-4370

Fax 905-896-4926

I have the authority to sign and register the document on behalf of the Chargor(s).

The applicant(s) hereby applies to the Land Registrar.

**Submitted By**

O'CONNOR ZANARDO 4310 Sherwoodtowne Blvd, #304 2018 09 07  
Mississauga  
L4Z 4C4  
Tel 905-896-4370  
Fax 905-896-4926

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.65  
Total Paid \$63.65

## SCHEDULE

IT IS AGREED between the parties and it shall require no further direction by the mortgagee herein that regular monthly payments under this mortgage shall be by way of a series of 12 cheques on closing, or pre-authorized debit, as required at lender's discretion, each in the amount of \$74,666.67.

In the event that any of the Mortgagor's post-dated cheques or pre-authorized cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn, the Mortgagor shall pay to each Mortgagee for each such returned cheques, the sum of ONE THOUSAND (\$1,000.00) DOLLARS as liquidated amount to cover Mortgagee's administration costs and not as penalty and such sum shall be a charge upon the said lands and shall bear interest at the rate hereinbefore stated. This mortgage is subject to late payment fee of ONE THOUSAND (\$1,000.00) DOLLARS per payment and renewal and discharge fees as applicable.

Any payment (other than payment of the regular payments of interest) that is made after 3:00 p.m. on any date, shall be deemed for the purpose of calculation of interest, to have been made and received on the next bank business day.

PROVIDED that the Mortgagor shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times upon payment of two (2) months' interest by way of bonus upon 60 days written notice to lender.

PROVIDED that this mortgage shall be fully due and payable on the maturity date unless the Mortgagor and the Mortgagee have agreed in writing in advance that the mortgage should be renewed, if the mortgage is not renewed in advance, and is not paid in full on the maturity date, then the Mortgagor shall be liable to pay a penalty of two (2) months interest and such penalty shall be paid whether or not the Mortgagee takes mortgage action or requests payment.

It is agreed that all costs and expenses of the Mortgagee incurred in endeavouring to collect any money overdue under this mortgage, including all legal costs on a solicitor and client basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Mortgagor.

The parties herein agree that payment to discharge the said mortgage must be by certified cheque.

In the event of the Mortgagors selling, transferring, conveying or refinancing the property herein mortgaged, then at the option of the mortgagee, the principal sum hereby secured together with all accrued interest thereon shall forthwith become due upon payment of two (2) months' bonus upon 60 days written notice to lender.

In the event the mortgagor defaults in the observance or performance of any of the covenants, terms, provisions or conditions in any mortgage to which this mortgage is subject, the principal sum secured, shall, at the option of the mortgagee, forthwith become due and payable and all powers of the mortgagee under this mortgage in the event of default may be exercised.

IT IS AGREED between the parties and it shall require no further notice to the Chargor, the Chargee has right to assign its interest to another party.

### MORTGAGE STATEMENTS

Provided that in the event the Chargees are required to provide a mortgage statement, there shall be an administration fee of \$100.00 for each such statement.

### INSURANCE

In the event that the Chargees deem it necessary to arrange for insurance to be placed on the subject property, any amount paid by the Chargees therefore shall be forthwith payable by the Chargor to the Chargees with interest and shall be part of the indebtedness secured by the Charge bearing interest at the rate set out in the Charge. The Chargor shall also pay to the Chargees an administration fee in the amount of \$500.00 on each occasion on which the Chargees so arrange the placement of insurance.

### REALTY TAXES

In the event that the Chargees deem it necessary to pay realty taxes on the subject property, if in default, any amount paid by the Chargees therefore shall be forthwith payable by the Chargor to the Chargees with interest and shall be part of the indebtedness secured by the Charge bearing interest at the rate set out in the Charge. The Chargor shall also pay to the Chargees an administration fee in the amount of \$500.00 on each occasion on which the Chargees pays realty taxes.

### INSPECTION

The Chargees or their agent may, in the event of default by the Chargor of any obligation under the Charge or as a requirement of maintaining insurance policy on the property, enter upon and inspect the subject property. There shall be an administration/inspection fee of \$200.00 for each attendance at the property.

**PENALTY UPON DEFAULT**

The Chargor agrees that should this Charge not be discharged on the "Balance Due Date" or if the Chargor fails to renew/extend this Charge on or before the "Balance Due Date" together with applicable renewal/extension fees or if the Chargees commence an action due to any default under the Charge, that the Chargees, in addition to all other remedies available, at their option shall be entitled to charge an additional amount equal to the payment of three month interest on the principal then outstanding.

**ADMINISTRATION FEE UPON DEFAULT**

In addition to any other fees or administration charges payable under this Charge, if the Chargees takes any proceeding by reason of the Chargor's default hereunder, the Chargees shall be entitled administration fee of \$1,200.00 for each such action or proceeding.

**THIS IS EXHIBIT "D" TO  
THE AFFIDAVIT OF PAUL MILLAR  
SWORN BEFORE ME THIS 13TH  
DAY OF JULY 2021**



---

*A Commissioner etc.*

**FORBEARANCE AGREEMENT**

THIS AGREEMENT is made as of the 17<sup>th</sup> day of March, 2020.

**BETWEEN:**

**SKYMARK FINANCE CORPORATION,**

(the “**Lender**”)

-and-

**MAHAL VENTURE CAPITAL INC.,**

a corporation governed by the laws of the Province of Ontario

(“**Mahal Inc.**”)

-and-

**GOLDEN MILES FOOD CORPORATION**

a corporation governed by the laws of Province of Ontario

(“**Golden Miles**”)

**RECITALS:**

- A. Mahal Inc. is the owner of the property municipally known as 155 Adams Blvd, Brantford, Ontario (the “**Property**”) and Golden Miles, which processes grain for the production of flour and flour based products, is the operating business at the Property (Mahal Inc. and Golden Miles are hereby collectively referred to as the “**Borrowers**”);
- B. The Lender advanced (i) a loan in the amount of \$9,600,000 to Mahal Inc. (the “**First Mortgage Loan**”), secured by a first-ranking mortgage registered against the Property, pursuant to a commitment letter dated November 30, 2016; (ii) a loan in the amount of \$6,400,000 to Mahal Inc. (the “**Second Mortgage Loan**”), secured by a second-ranking mortgage registered against the Property, pursuant to a commitment letter dated September 4, 2018; and (iii) a loan in the amount of \$4,000,000 to Mahal Inc. (the “**Third Mortgage Loan**”), secured by a third-ranking mortgage registered in favour of the Lender against the Property, pursuant to a commitment letter dated June 8, 2015 (the First Mortgage Loan, Second Mortgage Loan and Third Mortgage Loan are hereby collectively referred to as the “**Mortgage Loans**”);
- C. The Lender advanced (i) a loan in the amount of \$928,500 to Golden Miles, secured by certain equipment described in the Home Improvement Credit Application and Agreement dated October 25, 2017 (the “**First Equipment Loan**”); (ii) a loan in the amount of



\$3,360,000 to Golden Miles, secured by certain equipment described in the Home Improvement Credit Application and Agreement dated December 6, 2017 (the “**Second Equipment Loan**”); (iii) a loan in the amount of \$633,950 to Golden Miles, secured by certain equipment described in the Home Improvement Credit Application and Agreement dated March 14, 2018 (the “**Third Equipment Loan**”); (iv) a loan in the amount of \$879,500 to Golden Miles, secured by certain equipment described in the Home Improvement Credit Application and Agreement dated January 22, 2019 (the “**Fourth Equipment Loan**”); and (v) a loan in the amount of \$2,680,000 to Golden Miles, secured by certain equipment described in the Home Improvement Credit Application and Agreement dated January 25, 2019 (the “**Fifth Equipment Loan**”) (the First Equipment Loan, second Equipment Loan, Third Equipment Loan, Fourth Equipment Loan, and Fifth Equipment Loan are hereby collectively referred to as the “**Equipment Loans**”) (the Mortgage Loans and Equipment Loans are hereby collectively referred to as the “**Loans**”);

- D. The Borrowers have executed and delivered to the Lender the agreements described in **Schedule “A”** attached, as security for the Loans and other obligations to the Lender (collectively, the “**Loan and Security Documents**”);
- E. Golden Miles retained Vicano Construction Limited (“**Vicano**”) for the design and build of a flour mill on the Property. Due to a default in payments by Golden Miles, Vicano registered a construction lien on the Property on March 7, 2019 in the amount of \$4,640,578, and on April 10, 2019 in the amount of \$439,421 (collectively, the “**Vicano Liens**”);
- F. The Borrowers are in default of their obligations to the Lender;
- G. On November 21, 2019, CanadaFresh Corporation, Mahal Venture Capital Inc., Golden Miles Food Corporation and Santokh Mahal (the “**Plaintiffs**”) commenced an action against Bridging Finance Inc., Skylark Holdings Limited, Skymark Finance Corporation, Skylark Mortgages Limited and Merk Investments Ltd., by Statement of Claim bearing Court File No. CV-19-631456 (the “**Mahal Litigation**”);
- H. At the request of the Borrowers, the Lender is prepared to forbear from enforcing its security, subject to and in accordance with the terms and conditions of this Forbearance Agreement (hereinafter, this “**Agreement**”).

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree as follows:

#### **ARTICLE I – INTERPRETATION**

- 1.1. **Definitions.** In this Agreement, unless the context otherwise requires, all capitalized terms defined in the Loan and Security Documents and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan and Security Documents, as applicable.
- 1.2. **Gender and Number.** Words importing the singular include the plural and vice versa and words importing gender include all genders.

- 1.3. **Time.** Time is of the essence in the performance of the Borrowers' obligations.
- 1.4. **Severability.** Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.
- 1.5. **Headings.** The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.6. **Entire Agreement.** This Agreement, the Loan and Security Documents together with the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understanding or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.
- 1.7. **Governing Law.** This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 1.8. **Conflicts.** If there is any inconsistency or conflict between the terms of this Agreement and the terms of the Loan and Security Documents or any other agreement executed in connection therewith or herewith, the provisions of this Agreement shall prevail to the extent of the inconsistency.

## ARTICLE II – ACKNOWLEDGEMENTS

- 2.1. **Recitals.** The parties hereto acknowledge and agree that each of the foregoing recitals are true and accurate both in substance and in fact.

2.2. **Indebtedness.**

2.2.1. **Mahal Inc.** Mahal Inc. acknowledges that as of March 1, 2020, the aggregate amount owing to the Lender under the First Mortgage Loan was \$13,875,870.32, under the Second Mortgage Loan was \$2,338,125.80, under the Third Mortgage Loan was \$1,282,184.13, for a total of \$17,496,180.25.

2.2.2. **Golden Miles.** Golden Miles acknowledges that as of March 1, 2020, the aggregate amount owing to the Lender under the First Equipment Loan was \$1,155,851.85, under the Second Equipment Loan was ~~\$4,992,322.63~~, under the Third Equipment Loan was \$406,744.68, under the Fourth Equipment Loan was \$2,296,245.93, under the Fifth Equipment Loan was \$989,187.81, for a total of ~~\$9,840,352.90~~.

~~\$8,988,410.27~~  
 \$8,988,410.27  
 M

~~\$4,140,380.00~~  
 \$4,140,380.00  
 M

The aggregate sum of the Mortgage Loans, the Equipment Loans, and the Additional Credit Facilities (as defined below) together with accrued interest, fees and costs actually incurred by the Lender and all other amounts due or to become due by the Borrowers under the Loans, this Agreement or otherwise to the date such indebtedness is fully repaid (hereinafter collectively referred to as the “**Indebtedness**”). Mahal Inc. and Golden Miles hereby confirm that they do not dispute their respective liability to pay the Indebtedness on any ground whatsoever, that they have no claim, demand, set-off or counter-claim against the Lender on any basis whatsoever, and that there is no matter, fact or thing which may be asserted by them in extinction or diminution of the Indebtedness or result in any bar to or delay in the recovery thereof. If there are any claims for set-off, counter-claim or damages, they are hereby expressly released and discharged by the Borrowers.

- 2.3. **Default.** Without limiting the generality of Recital F above, Mahal Inc. acknowledges and agrees that the term of the Mortgage Loans have expired and have not been repaid and Golden Miles acknowledges and agrees that the Equipment Loans are in default.
- 2.4. **Loan and Security Documents.** The Borrowers acknowledge and agree that the Loan and Security Documents now held by the Lender for payment and performance of the Indebtedness have not been released, discharged, waived or varied and are valid, binding and enforceable in accordance with their respective terms.
- 2.5. **The Lender’s Rights.** The Borrowers acknowledge and agree that as the Loans are in default, the Lender is entitled to exercise its rights and remedies under the Loan and Security Documents, at law and in equity. The Borrowers further acknowledge and agree that except as provided in this Agreement, the Lender (by itself or through its employees and agents) has not made any promises, or taken any action or omitted to take any action which would constitute a waiver of its right to take any enforcement action in connection with the enforcement of the Loan and Security Documents, or which would estop it from so doing and that no statement, representation, promise, act or omission by the Lender or its employees or agents shall create such a waiver or estoppel. The Borrowers acknowledge and agree that by entering into this Agreement, the Lender, except as provided in this Agreement, has not waived any of its rights under any of the Loan and Security Documents, including without limitation the Lender’s right to take any enforcement action in connection with the enforcement of the Loan and Security Documents.
- 2.6. **Demand Letters and BIA Notices.** The Borrowers acknowledge that the Lender shall serve demand letters forthwith after execution of this Agreement (collectively, the “**Demands**”) wherein the Lender shall demand immediate payment of the Borrowers’ respective indebtedness, obligations and liabilities to the Lender together with Notices of Intention to Enforce Security (the “**BIA Notices**”) pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). The Borrowers agree not to contest the validity of the Demands, the BIA Notices, or the reasonableness of the time given for payment in any proceeding for any reason whatsoever. The Lender will not take any further enforcement steps subject to the terms of this Agreement.

### ARTICLE III – FORBEARANCE

- 3.1. The Borrowers have requested and the Lender has agreed to forbear from enforcing the Loans and the Security, subject to and in accordance with the terms and conditions of this Agreement.
- 3.2. The Lender agrees not to take any steps to enforce the Security until the earlier of:
- (a) June 30, 2021 (or such later date as the Lender, acting in its sole discretion may agree to in writing); and
  - (b) the occurrence of an Event of Default (as hereinafter defined)
- (hereinafter referred to as the “**Forbearance Termination Date**”, and the period commencing on the date hereof and ending on (but excluding) the Forbearance Termination Date is the “**Forbearance Period**”).
- 3.3. **Tolling.** Commencing on the next business day following execution of this Agreement and continuing until the date the Loans have been permanently repaid and cancelled, the parties hereto each agree to toll and suspend the running of the applicable contractual time limitations on the commencement of proceedings, any demands for payment, claims or defences, statutes of limitation, laches or other doctrines related to the passage of time in relation to the Loan and Security Documents and any entitlements arising therefrom or any other related matters, or any time-related doctrine (the “**Tolling Agreement**”). Each of the parties confirms that the Tolling Agreement is intended to be an agreement to suspend or extend the basic limitation period provided by section 4 of the *Limitations Act, 2002* (Ontario) (the “**Limitations Act**”) as well as the ultimate limitations period provided by section 15 of the Limitations Act in accordance with the provisions of section 22(3) and 22(4) of the Limitations Act and is intended to be a “business agreement” in accordance with section 22(5) of the Limitations Act and any contractual time limitations on the commencement of proceedings, any claims or defences based upon such statute of limitations, contractual limitations or any time related doctrine including waiver, estoppel or laches.

### ARTICLE IV – CONDITIONS

- 4.1. This Agreement is conditional upon compliance with each of the following terms and conditions:
- (a) the Lender shall have received a copy of this Agreement, fully executed by the Borrowers.

### ARTICLE V - ADDITIONAL CREDIT FACILITIES

Provided the Borrowers are not in default under the terms of this Agreement, the Lender agrees to provide the following additional credit facilities (collectively, the “**Additional Credit Facilities**”):

By way of Factoring

- 5.1. **Operating Line.** Subject to the Borrowers' compliance with section 6.3 below, the Lender shall make available to Golden Miles an operating line of credit in the maximum amount of \$1,500,000 for the purchase of grain for production purposes, substantially on the terms and conditions set out in the term sheet attached hereto as **Schedule "B"**.
- 5.2. **Mahal Loan.** The Lender agrees to provide an additional loan to Jesse Mahal in the amount of \$1,600,000 to be used solely to pay for the balance of the construction on the Property (the "**Additional Mahal Loan**"). The loan shall be personally guaranteed by Jesse Mahal and secured by a second-ranking charge on the property municipally known as 6845 Second Line West, Mississauga, Ontario, and substantially on the terms and conditions set out in the term sheet attached hereto as **Schedule "C"**.
- 5.3. **Factoring of Receivables.** The Lender agrees to provide Golden Miles with a factoring facility in an amount to be determined by the Lender in its sole discretion, for the purchase of accounts receivables of Golden Miles, substantially on the terms and conditions set out in the term sheet attached hereto as **Schedule "D"**.

**ARTICLE VI - COVENANTS AND AGREEMENTS**

- 6.1. **Litigation.** The Plaintiffs hereby consent to an order dismissing the Mahal Litigation on a without costs and with prejudice basis. Within 30 days following execution of this Agreement, the Borrowers shall have obtained an order dismissing the Mahal Litigation.
- 6.2. **Construction Liens.** The Borrowers shall have the Vicano Liens vacated or discharged by September 1, 2020 or such later date as may be mutually agreed upon by the Lender and the Borrowers.
- 6.3. **Monitor.** The Borrowers shall consent to the appointment by the Lender of KSV Advisory Inc. ("**KSV**") as monitor over their respective businesses to monitor their businesses and financial affairs, on terms to be mutually agreed upon by the Lender and the Borrowers.
- 6.4. **Mortgages.**

6.4.1. **First Mortgage Loan.** The Lender agrees to extend the term of the First Mortgage Loan to June 30, 2021. Commencing July 1, 2020, Mahal Inc. shall pay to the Lender on or before the first day of each month the amount of \$170,963.12 for payment of principal and interest. On June 30, 2021, the outstanding balance of the First Mortgage Loan shall be fully repaid by Mahal Inc.

6.4.2. **Second Mortgage Loan.** The Lender agrees to extend the term of the Second Mortgage Loan to June 30, 2021. Commencing July 1, 2020, Mahal Inc. shall pay to the Lender on or before the first day of each month the amount of \$31,463.24 for payment of principal and interest. On June 30, 2021, the outstanding balance of the Second Mortgage Loan shall be fully repaid by Mahal Inc.

- 6.4.3. **Repayment.** Mahal Inc. may repay in whole or in part the First Mortgage Loan or the Second Mortgage Loan at any time up to June 30, 2021, without notice or penalty.
- 6.4.4. **Third Mortgage Loan.** The Lender agrees to extend the term of the Third Mortgage Loan to June 30, 2021. Commencing July 1, 2020, Mahal Inc. shall pay to the Lender on or before the first day of each month the amount of \$8,333.33 for payment of ~~principal and interest~~ <sup>only</sup>. On June 30, 2021, the outstanding balance of the Third Mortgage Loan shall be fully repaid by Mahal Inc. *of full*
- 6.5. **Equipment Loans.** The Lender agrees to extend the term of the Equipment Loans to June 30, 2021. Commencing July 1, 2020, Golden Miles shall make monthly payments to the Lender on or before the first day of each month the amount of ~~\$184,849.09~~ <sup>only</sup> for monthly ~~principal and interest~~ payable on the Equipment Loans. On June 30, 2021, the remaining balance of the Equipment Loans shall be repaid by Golden Miles. *74,528.90* *of full*
- 6.6. **Cross-Default.** A default under the Mortgage Loans shall constitute a default under the Equipment Loans and a default under the Equipment Loans shall constitute a default under the Mortgage Loans.
- 6.7. **Full Co-operation.** During the Forbearance Period, the Borrowers shall cooperate fully with the Lender, including, without limitation, by providing promptly all requested documentation and information, and by providing the Lender and its agents unrestricted access to the books, records, property, assets and personnel of the Borrowers wherever they may be situated and in whatever medium they may be recorded, which right of access shall include the right to inspect and appraise such property and assets and to make and take away copies of books and records.
- 6.8. **Payments to Creditors.** The Borrowers shall utilize their available cash in a manner so as to ensure their respective continued operation and agree not to make any payments out of the ordinary course of business.
- 6.9. **Agreements Out of Ordinary Course.** The Borrowers shall not enter into any material agreements out of the ordinary course of business, except with the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.
- 6.10. **The Property.**
- (a) Mahal Inc. shall maintain the Property in good order and repair;
  - (b) The Borrowers shall pay all operating costs with respect to the Property, including but not limited to realty taxes, insurance, heat, water, gas, hydro and any other utility charge which may be levied upon or in connection with the Property as and when due;
  - (c) Mahal Inc. shall promptly provide the Lender with whatever documentation and information that it may require pertaining to the Property and the lease of the Property;

- (d) Mahal Inc. shall provide the Lender with proof of payment of realty taxes with respect to the Property satisfactory to the Lender upon request;
- (e) Mahal Inc. shall provide the Lender with evidence of insurance with respect to the Property satisfactory to the Lender upon request;
- (f) Mahal Inc. shall not enter into any leases or occupancy arrangements with respect to the Property without the prior written consent of the Lender, which may be withheld in its sole and absolute discretion;
- (g) Mahal Inc. shall, upon request by the Lender, allow the Lender, its agents and/or consultants unrestricted access to the Property to conduct environmental assessments, appraisals, valuations of the Property, and all fees, costs, disbursements and taxes incurred by the Lender in relation thereto shall be promptly paid by Mahal Inc., and to the extent not paid shall be added to the Indebtedness secured by the Security.

6.11. **Operational Obligations.** For the duration of the Forbearance Period, the Borrowers hereby covenant and agree with the Lender as follows:

- (a) the Borrowers shall maintain their respective corporate existences as valid and subsisting entities and shall not merge, amalgamate or consolidate with any other corporation, except with the Lender's prior written consent;
- (b) except as specifically provided for herein, the Borrowers shall comply in all respects with all terms and provisions of the Loan and Security Documents and this Agreement and nothing herein derogates therefrom. For greater certainty, except as provided for herein, the Borrowers shall continue to remit all payments when due under the Loan and Security Documents and shall operate all facilities within the terms and limits prescribed therein, except as amended by this Agreement;
- (c) the Borrowers shall not, without the prior written consent of the Lender, make any distribution or payment to any person, corporation or other entity who does not deal with the Borrowers at arm's length (as such term is defined in the *Income Tax Act* (Canada)), except for:
  - (i) payments of salary at levels not in excess of those now in effect;
  - (ii) payments by Golden Miles to Mahal Inc. for payment of rent for the Property in accordance with the current lease agreement between the parties;
- (d) the Borrowers shall not, without the prior written consent of the Lender, make any loans or advance money or property to any other party (including, without limitation, any subsidiary or affiliate of the Borrowers) or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets or property of any other party (including, without limitation, any subsidiary or affiliate of the Borrowers), or guarantee, assume, endorse, or otherwise become responsible (directly or indirectly) for the indebtedness, performance, obligations or dividends of any other party (including, without

limitation, any subsidiary or affiliate of the Borrowers) or agree to do any of the foregoing, other than as required by the Loan and Security Documents;

- (e) the Borrowers shall not, without the prior written consent of the Lender, repay any amount for principal or interest or otherwise which may be owing or become owing in connection with any shareholder or related party loan;
  - (f) the Borrowers shall not, without the prior written consent of the Lender, make any distribution (whether by dividend or otherwise) or effect any return of capital on any investment made by any shareholder, or any party related to any shareholder;
  - (g) the Borrowers shall take all steps requested by the Lender to cure any deficiencies in the security granted to the Lender in the Loan and Security Documents;
  - (h) unless otherwise agreed to herein, the Borrowers shall not do any act or thing which may have the effect of defeating or delaying the enforcement of the Lender's rights and remedies under the Loan and Security Documents.
- 6.12. **Capital Expenditures.** The Borrowers shall not make any capital expenditures without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.
- 6.13. **Encumbrances.** The Borrowers shall not encumber, sell, transfer, convey, lease, sublease or otherwise dispose of the Property or any part thereof out of the ordinary course of business without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.
- 6.14. **Notice of Default.** The Borrowers shall, upon coming aware of same, forthwith provide the Lender with written notice of the occurrence of an Event of Default hereunder.
- 6.15. **Notice of Enforcement.** The Borrowers shall notify the Lender in writing immediately upon receipt of any claim or demand, verbal or written, from any person, for the payment of indebtedness (excluding claims or demands for repayment of trade payables in the ordinary course of business), or immediately upon learning of any actual or threatened seizure or repossession of property of the Borrowers, or the enforcement of security against the Borrowers in relation to the Property.
- 6.16. **Notice of Proceedings.** The Borrowers shall provide the Lender with notice of the commencement of any law suit, other proceedings or action, aside from the Mahal Litigation, brought by any person against the Borrowers within one business day of receipt of same, and provide the Lender with a copy of the relevant pleadings and diligently keep the Lender current and up to date with respect to the status of any such law suit, proceeding or other action.
- 6.17. **Priority Payables.** The Borrowers shall keep current all of their obligations to creditors who may have a lien, charge, security interest or deemed trust in the properties and assets which may rank in priority or *pari passu* to the security held by the Lender on the properties



and assets of the Borrowers, including, without limitation, all amounts owing for wages, vacation pay, realty taxes, operating costs for the Property (including utilities), employee source deductions pursuant to the *Canada Pension Plan Act* (Canada), *Employment Insurance Act* (Canada) and *Income Tax Act* (Canada), goods and services tax, harmonized sales tax, provincial sales tax, employer health tax, construction liens and Workplace Safety and Insurance Board premiums (collectively, the “**Priority Payables**”).

- 6.18. **Proof of Priority Payables.** The Borrowers shall provide written evidence to the Lender, forthwith upon request made by the Lender, that all Priority Payables have been paid, such written evidence to be in a form and content to the satisfaction of the Lender in its sole discretion.
- 6.19. **Material Contracts.** The Borrowers shall not surrender, terminate, repudiate or amend, vary or modify in a manner adverse to the Lender acting reasonably, any material contract with respect to its business without the prior written consent of the Lender which may be withheld in the Lender’s sole discretion.
- 6.20. **Restructuring and Reorganization Proceedings.** The Borrowers shall not commence any restructuring or reorganization proceeding under the BIA and/or the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCA**”) without the Lender’s prior written consent. In the event that the Borrowers commence any such proceedings, they agree that the Lender shall be an “unaffected creditor” under any such proceedings, and it hereby consents to a court order lifting any stay of proceedings as against the Lender.
- 6.21. **CRA Consent.** The Borrowers shall contemporaneously with the execution of this Agreement provide the Lender with fully completed and executed business consents on the Canada Revenue Agency standard form (collectively, the “**CRA Consents**”) and at no time revoke the CRA Consents during the Forbearance Period.

## ARTICLE VI – DEFAULT

- 7.1. **Events of Default.** Any one or more of the following events will constitute an event of default under this Agreement (each an “**Event of Default**”):
- (a) the non-payment when due of any principal, interest or other amounts payable by the Borrowers to the Lender under this Agreement, including the Additional Credit Facilities, the Loan and Security Documents or otherwise;
  - (b) failure by the Borrowers to obtain an order dismissing the Mahal Litigation within 30 days from the execution of this Agreement;
  - (c) failure by the Borrowers to provide the Lender with occupancy certificates issued for the Property from the City of Brantford by July 1, 2020 or a date that is mutually agreed upon in writing by the Lender and the Borrowers that is prior to July 1, 2020;
  - (d) failure by the Borrowers to repay the Indebtedness on or before the Forbearance Termination Date;

- (e) a default or breach of any obligation, promise, covenant, term or condition occurs under this Agreement or the Loan and Security Documents;
- (f) any material representation, warranty or statement made by the Borrowers in any certificate or other document delivered to the Lender in connection with the Loans or herewith is false or misleading in any material respect;
- (g) failure by the Borrowers to perform or comply with any of their covenants or obligations contained in this Agreement, any of the Loan and Security Documents (as amended herein) or in any other agreement or undertaking with the Lender, other than the covenants, obligations or undertakings with which the Borrowers have already failed to perform or comply with at time of execution of this Agreement;
- (h) failure to provide the Lender with the reporting required under the Loan and Security Documents or this Agreement as and when such reporting is required to be delivered;
- (i) a proceeding is taken by or against the Borrowers with respect to a reorganization, compromise or arrangement with creditors, or to have the Borrowers declared Bankrupt, or a proceeding is taken to have a receiver, interim receiver, lien trustee, receiver and manager or agent appointed over all or any part of the property, assets or undertakings of the Borrowers (including the private appointment of any such receiver, receiver and manager or agent), or a party takes possession of all or any part of the property and assets of the Borrowers by distress or execution, or a similar process is levied or enforced against all or any material part of the property of the Borrowers;
- (j) registration of a claim for lien against the Property unless such claim for lien is discharged within 10 days of such registration;
- (k) the Borrowers commit or allow to occur an act of bankruptcy or make an unauthorized assignment or bulk sale of their property or assets;
- (l) there is a change in the *de jure* or *de facto* control of the Borrowers;
- (m) the Borrowers fail to maintain and keep current payments of Priority Payables, which may result in any claim ranking in priority or *pari passu* to the claim of the Lender;
- (n) the loss, damage, destruction or confiscation of any of the Borrowers' property or assets or any part thereof, unless upon such event, the Borrowers pay to the Lender forthwith such amount as the Lender, in its sole and absolute discretion, determines is satisfactory;
- (o) any person threatens to take or takes possession of any property of the Borrowers by way of or in contemplation of enforcement of security, or a distress or execution or similar process levied or enforced against any property of the Borrowers;

- (p) in the Lender's sole opinion, a material adverse change occurs in the business, affairs, financial condition, operation or ownership of the Borrowers arising for any reason whatsoever;
- (q) the Borrowers fail to maintain insurance on their properties and assets;
- (r) without the Lender's prior written consent, the Borrowers cease or threaten to cease to carry on business in the normal course in the same manner as such business has previously been carried;
- (s) without the prior written consent of the Lender, the Borrowers take any action or commence any proceeding or any action or proceeding is taken or commenced by another person or persons against the Borrowers relating to the reorganization, readjustment, compromise or settlement of the debts owed by the Borrowers to its creditors, including, without limitation, the filing of a Notice of Intention to Make a Proposal under the BIA, the application for an order under the CCAA or the commencement of any similar action or proceeding by any party other than the Lender;
- (t) the filing of an application for a bankruptcy order against the Borrowers pursuant to the provisions of the BIA by any party other than the Lender;
- (u) the Lender, in its sole and absolute discretion, believes that the prospect of payment of the Indebtedness or performance by the Borrowers of any of their obligations under this Agreement or the Loan and Security Documents is or is about to be impaired or that all or any part of the Borrowers' assets is or is about to be placed in jeopardy; and
- (v) the occurrence of any other event which, in the opinion of the Lender, acting reasonably, may materially and adversely impact the priority or enforceability of the Security or the realizable value of the collateral subject to such security;
- (w) the expiration or termination of the Forbearance Period unless the Indebtedness of the Borrowers has been fully repaid to the Lender by such date.

7.2. **Remedies.** In addition to the Lender's rights and remedies available under the Loan and Security Documents, this Agreement, at law or in equity, upon the occurrence of an Event of Default:

- (a) the balance of the Indebtedness shall, at the option of the Lender, become immediately due and payable without further notice or demand by the Lender to the Borrowers; and
- (b) the Security shall, at the Lender's option, become enforceable in accordance with its terms, including without limitation the Lender's rights to: (i) commence power of sale proceedings in respect of the Property; (ii) appoint a private receiver over the Borrowers' properties, assets and undertakings; or (iii) seek the appointment by

a court of an interim receiver, receiver or receiver and manager of the Borrowers' properties, assets and undertakings.

#### ARTICLE VII – CONSENTS

- 8.1. Subject to applicable law, upon the occurrence of an Event of Default, the Borrowers consent to any action by the Lender in connection with the enforcement of the Loan and Security Documents, without the necessity of further notice or demand, and hereby agree not to directly or indirectly commence, carry on, consent to, or be a party in any way to any proceeding which would constrain any such action or which would call into question the validity or enforceability of the Indebtedness, this Agreement and/or the Loan and Security Documents. Without limiting the generality of the foregoing, upon or after the occurrence of an Event of Default, the Borrowers irrevocably consent to the private or court appointment of an interim receiver, receiver, receiver and manager or lien trustee in respect of any or all of their respective property or assets.

#### ARTICLE VIII - GENERAL PROVISIONS

- 9.1. **Reimbursement.** The Borrowers agree to reimburse the Lender in respect of all reasonable expenses (including all legal fees and disbursements, at the Lender's lawyers standard hourly rates) which the Lender has incurred or will incur in connection with any review of the Loan and Security Documents, the negotiation, preparation and administration of this Agreement and the enforcement of the Loan and Security Documents. The Lender may pay such expenses directly and the amount so paid shall form part of the Indebtedness and shall bear interest from the date of payment at the highest rate payable by the Borrowers for any of their Indebtedness to the Lender.
- 9.2. **Release.** The Borrowers (the "**Releasers**") hereby absolutely and irrevocably release, remise, acquit and forever discharge the Lender, its officers, directors, shareholders, employees, agents, representatives, consultants, counsel, predecessors, subsidiary corporations, parent corporations, and the successors and assigns of each of the foregoing (all of the foregoing hereinafter called the "**Released Parties**"), from any and all actions, causes of action, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any manner or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date of execution hereof, and in any way directly or indirectly arising out of or in any way connected to this Agreement, the Loans and the Loan and Security Documents and those matters that were alleged or could have been alleged in the Mahal Litigation (the "**Released Matters**"). The Borrowers represent and warrant to the Lender that they have not transferred, assigned or otherwise conveyed any of their rights, title or interest in any Released Matter to any other person and that the foregoing constitutes a full and complete release of all Released Matters. The foregoing release shall survive the termination of this Agreement and the Loan and Security Documents and the repayment of the Indebtedness.

- 9.4. **Independent Legal Advice.** The Borrowers acknowledge that, in executing and delivering this Agreement, they have acted and continue to act freely and without duress. The Borrowers confirm that they have had the benefit of independent legal advice in connection with the preparation and negotiation of this Agreement.
- 9.5. **Capacity and Authority.** The Borrowers represent and warrant to the Lender that they have the capacity and authority to enter into and perform their obligations under this Agreement.
- 9.6. **Necessary Proceedings.** The execution and delivery of this Agreement and the performance by the Borrowers of their obligations hereunder have been duly authorized by all necessary proceedings.
- 9.7. **Notices.** Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by means of electronic communication:

- (i) in the case of a Notice to the Lender at:

Skymark Holdings Limited  
46 Village Centre Place, Suite 300  
Mississauga, ON L4Z 1V9

Attention: Paul Millar  
Email: paul@yorklondon.com

and with a copy to:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Attention: Harvey Chaiton  
Email: harvey@chaitons.com

- (ii) in the case of a Notice to Mahal Inc.:

6845 Second Line West  
Mississauga, ON L5W 1M8

Attention:

Email:

and with a copy to:

[NTD: Insert Address]

Attention:

Email:

(iii) in the case of a Notice to Golden Miles:

800 Swinbourne Drive  
Mississauga, ON L5V 1J6

Attention:

Email:

and with a copy to:

[NTD: Insert Address]

Attention:

Email:

The date of receipt of such notice shall be the date of the actual delivery to the address specified if delivered or the date of actual transmission to the electronic address if sent by electronic communication, unless such date is not a **Business Day**, in which event the date of receipt shall be the next **Business Day** immediately following the date of such delivery or transmission. "**Business Day**" means a day other than a Saturday, Sunday, statutory holiday in the Province of Ontario, or any other day on which the Schedule 1 Canadian

Chartered Lenders located in the City of Toronto are not open for business during normal Banking hours.

- 9.8. **Assignment.** The Borrowers may not assign this Agreement or any of their respective rights or obligations under this Agreement except with the prior written consent of the Lender which may be withheld in the Lender's sole discretion.
- 9.9. **Amendment.** No amendment, modification, waiver of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound thereby.
- 9.10. **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors (including any successor by reason of amalgamation of any party) and permitted assigns.
- 9.11. **No Third Party Beneficiaries.** Unless expressly stated herein, this Agreement shall be solely for the benefit of the parties hereto and no other person or entity shall be a third party beneficiary hereof.
- 9.12. **No Novation.** This Agreement shall not constitute and shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of any of the Loan and Security Documents.
- 9.13. **Execution and Delivery.** This Agreement may be executed in counterparts, and acceptance of this Agreement may be provided by email transmission in PDF format and, on such execution and transmission, this Agreement shall be binding on the parties with the same force and effect as if originally executed.

**[remainder of page intentionally left blank]**

IN WITNESS OF WHICH the parties have duly executed this Agreement on the date described above.

**MAHAL VENTURE CAPITAL INC.**



Name: Jesse Mahal  
Title: CEO

**SKYMARK FINANCE CORPORATION**



Name: Paul Millar  
Title: Vice President

**WITNESS:**



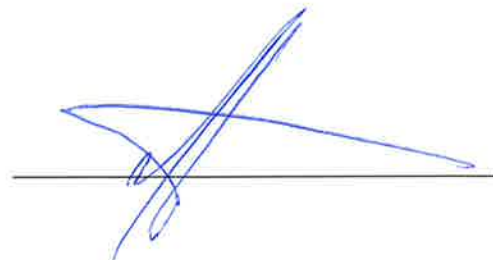
Print Name:



**WITNESS:**



Print Name:





**SCHEDULE "A"****(Loan and Security Documents)**

Commitment Letter between Skylark Holdings Limited and Mahal Venture Capital Inc. dated November 30, 2016

Commitment Letter between Skylark Holdings Limited and Santosh Mahal dated June 8, 2015

Commitment Letter between Skylark Holdings Limited and Mahal Venture Capital Inc. dated September 4, 2018

Charge/Mortgage granted by Mahal Venture Capital Inc. in favour of Skymark Finance Corporation registered as Instrument No. BC322166 dated August 9, 2017

Charge/Mortgage granted by Mahal Venture Capital Inc. in favour of Skymark Finance Corporation and KLN Holdings Inc. registered as Instrument No. BC344769 dated September 7, 2018

Transfer of Charge/Mortgage (registered as Instrument No. BC276347 dated June 22, 2015) granted by Merk Investments Ltd. in favour of Skymark Finance Corporation registered as Instrument No. BC311800 dated February 28, 2017

Home Improvement Credit Application and Agreement between Skymark Finance and Golden Mile Food Corporation dated October 25, 2017

Home Improvement Credit Application and Agreement between Skymark Finance and Golden Mile Food Corporation dated December 6, 2017

Home Improvement Credit Application and Agreement between Skymark Finance and Golden Mile Food Corporation – undated dated March 14, 2018

Home Improvement Credit Application and Agreement between Skymark Finance and Golden Mile Food Corporation - undated dated January 25, 2019

Home Improvement Credit Application and Agreement between Skymark Finance and Golden Mile Food Corporation dated January 22, 2019

All items above are herein collectively referred to as the "**Security**".

**SCHEDULE "B"**

Term Sheet

**SCHEDULE "C"**

Term Sheet

**SCHEDULE "D"**

Term Sheet

SKYMARK FINANCE CORPORATION

-and- MAHAL VENTURE CAPITAL INC. and GOLDEN MILES FOOD CORPORATION

Applicant

Respondents

Court File No. CV-21-00664778-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**FURTHER SUPPLEMENTARY APPLICATION  
RECORD**

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO # 21592F)

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E-mail: [stanvir@chaitons.com](mailto:stanvir@chaitons.com)

**Lawyers for the Applicant**